

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Revise  
Commission General Order Number 95 Pursuant  
to D.05-01-030.

Rulemaking 05-02-023  
(Filed February 24, 2005)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

Following a Prehearing Conference (PHC) on May 24, 2005, and pursuant to Rule 6(c)(2) and 6.3 of the Rules of Practice and Procedure, this Scoping Memo and Ruling confirms the category for this proceeding and discusses the issues, scope and schedule for this rulemaking proceeding.

**1. Summary**

Pursuant to Rulemaking (R.) 05-02-023, this proceeding considers whether to add Proposed Rule 94 to General Order (GO) 95. Proposed Rule 94 is identical to Proposed Rule Change (PRC) 26 considered in R.01-10-001. PRC 26 was not adopted in that proceeding. (*See* Decision 05-02-023.) Instead, the Commission ordered further proceedings to deal with objections to the new rule. PRC 26 and Proposed Rule 94 purport to establish uniform construction standards for attaching wireless antennas to jointly used poles and towers in this state.

**2. Categorization of the Proceeding**

R.05-02-023 preliminarily categorized this proceeding as quasi-legislative, as that term is defined in Rule 5(d). It added that the assigned Commissioner and the Administrative Law Judge (ALJ) may set evidentiary hearings if deemed necessary. No objection to the categorization has been filed. I confirm the

categorization as quasi-legislative, and I rule that an evidentiary hearing will be necessary to resolve disputed issues of fact.

### **3. Ex Parte Rules**

In a quasi-legislative proceeding, under Rule 7(d), ex parte communications are allowed without restriction or reporting requirement.

### **4. Scope of the Proceeding**

The issues to be considered in this proceeding are:

- (1) Does § 332(c)(7)(B)(iv) of the 1996 Telecommunications Act preempt the Commission from adopting requirements on the clearances between facilities that should be maintained when wireless carriers attach wireless antenna with radio frequency (RF) emissions to jointly used poles and towers?
- (2) Does the record provide evidence supporting the concept of a “cylinder of proximity” in which electric supply and communication workers, and others, can move without coming into proximity of RF emissions that the Federal Communications Commission (FCC) has deemed hazardous, or does the “cylinder” concept result in more stringent RF emission standards that are contrary to law?
- (3) Has a 4-foot default distance been justified as part of the “cylinder of proximity”?
- (4) Does § 332(c)(7)(B)(iv) preempt the Commission from requiring a disconnect switch on RF-emitting wireless antennas attached to jointly used poles and towers? What evidence supports the need for such a disconnect switch, and are disconnect switches required for any other type of facility attached to jointly used poles and towers?
- (5) Does Proposed Rule 94 deal adequately with pole-top installations and ancillary installations with respect to RF-emitting wireless antennas?

- (6) What evidence supports applying the wireless antenna rule on wireless communications companies while exempting the RF-emitting unlicensed antennas of power companies and others?

## **5. Schedule**

A evidentiary hearing is necessary. The parties have agreed to the following schedule:

July 12-13, 2005	The Commission's Consumer Protection and Safety Division (CPSD) will conduct a workshop in San Francisco, the time and location for which will be announced by CPSD. The workshop will be conducted either by a professional facilitator or by a CPSD staff member, pursuant to an agreement developed at the PHC.
July 26-27, 2005	CPSD will conduct a workshop in Los Angeles, the time and location for which will be announced by CPSD.
August 15, 2005	CPSD will file and serve a Workshop Report stating accords, if any, reached by the parties on Proposed Rule 94 and briefly summarizing the positions of the parties. Parties may file and serve comments on the Workshop Report within five working days of its issuance.
August 30, 2005	Parties will serve the written testimony and exhibits of witnesses they expect to call at the evidentiary hearing. Testimony will be in question-and-answer format where practical, with a copy to the Assigned Commissioner and the ALJ.
September 27, 2005	Parties will serve their written reply testimony and exhibits, with a copy to the Assigned Commissioner and the ALJ.

October 18-20, 2005

Evidentiary hearing will be conducted beginning at 10:00 a.m., October 18, 2005, in the Commission Hearing Room, State Office Building, 505 Van Ness Avenue, San Francisco, California

Briefs and reply briefs are to be filed after receipt of transcripts on dates to be determined at hearing.

At least two weeks prior to the first workshop, any party proposing to offer an expert presentation will serve the expert's written presentation to the other participants in the workshop. No such presentation shall exceed two hours, including time for questions.

It is my goal to have a resolution of this matter at or shortly after the end of the year. The submission date will be the date that final briefs are due.

## **6. Discovery**

Unless otherwise directed, responses to data requests are to be served within 10 business days of receipt of a written motion.

## **7. Service List; Electronic Service**

The Service List for this proceeding is posted on the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) and includes electronic mail addresses for virtually all participants. Pursuant to Rule 2.3.1 of the Rules of Practice and Procedure, service of the Workshop Report, prepared testimony, motions, briefs and other documents shall be made by electronic mail to participants who have supplied an electronic mail address. A paper copy of all such documents also shall be served on the ALJ and on those who request a paper copy.

## **8. Presiding at Hearing**

I designate ALJ Glen Walker to preside at the hearing in this matter.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. This proceeding is quasi-legislative, and an evidentiary hearing is necessary.
4. Unless otherwise directed, responses to data requests are due within 10 business days of the date of receipt of a motion.
5. Service of documents shall be made by electronic mail pursuant to Rule 2.3.1 of the Rules of Practice and Procedure, with a paper copy also served on the ALJ.
6. Administrative Law Judge Glen Walker will preside at the evidentiary hearing.

Dated June 7, 2005, at San Francisco, California.

/s/ GEOFFREY F. BROWN

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Geoffrey F. Brown  
Assigned Commissioner

## CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated June 7, 2005, at San Francisco, California.

/s/ FANNIE SID  
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Fannie Sid

## N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.